

APPEAL NO. 022596
FILED NOVEMBER 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 20, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(e). The parties stipulated that the claimant sustained a compensable injury on _____, with an impairment rating of 26%, and that the fifth quarter of SIBs was from June 27 through September 25, 2002. It is undisputed that the qualifying period for the fifth quarter of SIBs was from March 15 through June 13, 2002.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. The claimant testified that although he searched for employment every week of the qualifying period, he did not document his job contacts for the first two weeks of the qualifying period. The hearing officer was not persuaded that the claimant made job contacts the first two weeks of the qualifying period in dispute and she determined that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work.

The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Upon our review of the record, we conclude that the hearing officer's determination is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN, ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Veronica Lopez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge